APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAZAR T. WRACSARICHT, et al.	]	
	]	
Plaintiffs-Appellants,	]	NO. 81-3210
	]	
vs.	]	MEMORANDUM
	]	
UNITED STATES OF AMERICA, et al.,	]	
	]	
	]	
Defendants-Appellees.	]	
	]	

Appeal from the United States District Court
for the Western District of Washington
District Judge Walter T. McGovern,
Presiding

[Argued and Submitted June 8, 1982]

Before: WRIGHT, SKOPIL and ALARCON, Circuit Judges.

We affirm the dismissal of this damage suit brought under the Federal Tort Claims Act.

Plaintiff was born in the United States in 1917. As a child, he was taken to Yugoslavia where he remained until 1972, when he applied for a United States passport. While that application was pending, he re-

turned to this country on a business visa under his Yugoslav passport.

For the next three years, his attempts to establish his citizenship through the INS were futile. In 1975, he prevailed in district court. We affirmed in an unpublished memorandum. (Wracsaricht v. United States, Nov. 11, 1977). Thereafter, appellant received his passport.

In 1979, he reviewed his INS and Department of State files and discovered that he had been the subject of a potential trade for an American skyjacker held by the Yugoslav government. The State Department's effort to block his passport appliction had protracted his administrative proceedings.

In May, 1980, he filed a complaint under the Federal Tort Claims Act (FTCA), in which he alleged submission of appropriate administrative claims in 1979, four years after his citizenship was recognized. The district

court dismissed the suit because his administrative claims had been untimely under 28 U.S.C. § 2401(b).

Claims under the FTCA are barred unless submitted to the appropriate federal agency within two years of accrual. Generally, a claim accrues at the time of injury. United States v. Kubrick, 444 U.S. 111, 120 (1979). When the injury is not readily apparent, the claim accrues when the claimant learns or should have learned of the injury and its cause. Davis v. United States, 642 F.2d 328, 331 (9th Cir. 1981), cert. denied, 102 S.Ct. 1273 (1982).

Evaluated under the general rule, plaintiff's cause of action matured in 1975 when the State Department interfered with his passport application. It was barred when no administrative claims were filed by 1977.

Plaintiff urges our application of the so-called discovery rule, arguing that even

if his injury was apparent in 1975, he was not aware of the cause until 1979.

Plaintiff's complaint alleges no facts to support his contention that he could not have discovered the cause of his injury within two years by the exercise of reasonable diligence. He does not charge the government with deliberately withholding the information detailing the government's involvement in his INS case. See Davis v. United States, 642 F.2d at 331-32 (no showing of fraudulent concealment); see also Ware v. United States, 626 F.2d 1278 (5th Cir. 1980).

Sufficient information was available as early as 1975 in his file in the Seattle Immigration Office. He says only that following recognition of his citizenship in 1975, his concern over the length of the bureaucratic delay was removed from his mind.

Although other circuits have applied the discovery rule to cases not involving

medical malpractice injuries, Stoleson v. United States, 629 F2d 1265 (7th Cir. 1980), Liuzzo v. United States, 485 F. Supp. 1274 (E.D. Mich. 1980), this court has not, and we decline to do so here.

AFFIRMED.

IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF WASHINGTON AT TACOMA

LAZAR T. WRACSARICHT, et al.,	]	
	]	
Plaintiffs,	]	NO. C80-480M
	]	ORDER
vs.	]	
	]	
UNITED STATES OF AMERICA, et al.,	]	
	]	
	]	
Defendants.	]	
	]	

THIS COURT having reviewed all matters arising under this cause makes the following findings and rules:

PLAINTIFF'S CLAIMS UNDER 42 U.S.C. §§1983, 1985(3)

1. Plaintiff's Original Complaint alleged violations under 42 U.S.C. Section 1983.

2. Plaintiff's First Amended Complaint alleged violations under 42 U.S.C. section 1985(3).

3. Defendant has moved this court to dismiss the above-mentioned claims for im-

proper subject matter jurisdiction, and failure to allege class based animus.

4. 42 U.S.C. §1983 provides a remedy for deprivation of rights under the color of state law, not federal law. Seibert v. Raptist, (5th Cir. 1979) 594 F.2d 423.

5. 42 U.S.C. §1985(3) applies only when there is some racial or class based discriminatory animus behind the conspirators' action. Griffin v. Breckenridge, (1971), 403 U.S. 88, 102.

6. Plaintiff has failed to show any deprivation of rights under the color of state law, therefore Defendant's Motion to Dismiss all claims under 42 U.S.C. §1983 for Failure to State a Claim for Which Relief can be Granted, pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, is GRANTED.

7. Plaintiff has failed to show class-based discriminatory animus, therefore Defendant's Motion to Dismiss all claims under

42 U.S.C. §1985(3) for Failure to State a Claim for Which Relief can be Granted, pursuant to Rule 12(b)(6) Federal Rules of Civil Procedure, is GRANTED.

8. All previous orders regarding the claims under 42 U.S.C. §§1983, 1985(3) are vacated.

PLAINTIFF'S CLAIMS UNDER 28 U.S.C. §§1346(b) and 2671, et seq.

1. Plaintiff's Original Complaint alleging damages under the Federal Tort Claims Act failed to show that Plaintiff ever filed any administrative claim and, thus, was insufficient under 28 U.S.C. §2675(a).

2. Plaintiff's First Amended Complaint alleged that administrative claims were filed, and either denied, or the mandatory time period expired.

3. Plaintiff's Amended Complaint does not specify the dates when the administrative claims were filed, nor denied.

4. Defendant has moved this Court to dismiss this claim for failure to exhaust administrative remedies, or in the alternative, to bar such claim because the statute of limitation precludes claims brought after a two year period.

5. Subsequent to Judge Sharp's finding of citizenship in 1975 Plaintiff had two years to file an administrative claim against the federal agencies. Plaintiff has not adequately explained why administrative claims were not filed until 1979.

6. Plaintiff's failure to submit timely claims precludes adjudication pursuant to the Federal Tort Claims Act Statute of Limitations, 28 U.S.C. §2401(b).

7. Defendant's Motion to Dismiss all claims under 28 U.S.C. §§1346(b), 2671 et seq., pursuant to Rule 12(b)6, Federal Rules of Civil Procedure, is GRANTED.

8. All previous orders regarding the

claims under 28 U.S.C. §§1346(b), 2671 et seq., are vacated.

The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel of record.

DATED this 5 day of February, 1981.

JACK E. TANNER
UNITED STATES DISTRICT JUDGE